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09/763,058	04/27/2001	Isabelle Bara	05725.0857	1997

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 07/11/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/763,058

Applicant(s)

BARA ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30,33,36,41-50,60-69 and 75-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30,33,36,41-50,60-69 and 75-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Receipt of Amendment B received on April 23, 2003 is acknowledged. Claims 30, 33, 36, 41-50, 60-69, and 75-85 are included in the prosecution of this application.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection based on amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 30, 33, 36, 41-42, 46-50, 60-69, 75, and 79-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0803245.

EP teaches a compact solid gel for skin care containing water in the range of 15-90%, polysaccharides in the range of 0.3-4%, humectants ranging from 4-40%, and a powder phase ranging from 2-35%. Polysaccharides suitable are carrageenin, agar,

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gellan, and alginic acid. See column 1, lines 34-38. Suitable humectants such as glycerin, polypropylene glycol, butylene glycol, dimethicone copolyol, etc. are taught on column 1, lines 40-45. Suitable pigments are listed on column 2, lines 3-20. The pigments may be coated with lecithin or other material to improve dispersion of the pigments into the gel. Suitable salts such as sodium, potassium, magnesium chloride, etc. are taught on column 1, lines 52-55.

EP does not specify the hardness of the composition.

Although EP does not specify the hardness of the solid gel, it is deemed obvious to one of ordinary skill in the art to look to EP and formulate a gel with the instant hardness. One would be motivated to do so since EP teaches formulating a solid gel that has solidity and compactness that allows the composition to be applied directly without its form being compulsory confined by a container. Furthermore without showing otherwise, it is deemed that EP teaches a similar hardness due to the features recited above, which would cause the product to function as instant invention.

Claims 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0803245 in view of Roulier et al (6,045,814).

EP teaches a compact solid gel for skin care containing water in the range of 15-90%, polysaccharides in the range of 0.3-4%, humectants ranging from 4-40%, and a powder phase ranging from 2-35%. Polysaccharides suitable are carrageenin, agar, gellan, and alginic acid. See column 1, lines 34-38. Suitable humectants such as glycerin, polypropylene glycol, butylene glycol, dimethicone copolyol, etc. are taught on column 1, lines 40-45. Suitable pigments are listed on column 2, lines 3-20. The

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pigments may be coated with lecithin or other material to improve dispersion of the pigments into the gel. Suitable salts such as sodium, potassium, magnesium chloride, etc. are taught on column 1, lines 52-55.

EP does not specify the particle size in the powder phase.

Roulier et al teach a cosmetic solid gel. Roulier teaches that each filler to impart specific and different qualities to a composition. For instant organic fillers impart softness and a slippery feel; fillers of inorganic spherical type impart good breakdown properties, and organic fillers generally have a structuring role. The use of micas and aluminosilicates are utilized in the particle size of 2-200 microns for a transparent and satiny appearance. Oxides of titanium and zinc are generally used in the size of less than 1 micron for a creamy feel and opacity. Calcium carbonate is used in the size of greater than 10 microns to impart a matte appearance. Metal soaps are used in the size of less than 10 microns. See column 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of EP and Roulier et al and use the instant particle sizes. One would be motivated to do so since Roulier teaches that different particles impart different qualities and require the utilization of a certain particle range and depending on the desired particle chosen, the particle size would be chosen accordingly. Therefore, the use of the instant particle size depends on the given particle. Furthermore, one could reasonably expect success since both references teach solid cosmetic gels and similar pigments to be incorporated into the composition.

Claims 75-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0803245 in view of Klein (4,486,405).

EP teaches a compact solid gel for skin care containing water in the range of 15-90%, polysaccharides in the range of 0.3-4%, humectants ranging from 4-40%, and a powder phase ranging from 2-35%. Polysaccharides suitable are carrageenin, agar, gellan, and alginic acid. See column 1, lines 34-38. Suitable humectants such as glycerin, polypropylene glycol, butylene glycol, dimethicone copolyol, etc. are taught on column 1, lines 40-45. Suitable pigments are listed on column 2, lines 3-20. The pigments may be coated with lecithin or other material to improve dispersion of the pigments into the gel. Suitable salts such as sodium, potassium, magnesium chloride, etc. are taught on column 1, lines 52-55.

Although EP teaches the use of lecithin and other surfactants to aid in dispersion of the pigment, EP does not specify the instant surfactants.

Klein teaches an aqueous pigmented cosmetic vehicle. Klein teaches that the use of surfactants such as alkoxylated surfactants act as emulsifiers forming stable cosmetic vehicles. See column 1, lines 64-68. Gums and polymers are taught to aid in forming suspending solids. See column 1, lines 50-63.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of EP and Klein and use the instant surfactants. One would be motivated to do so since Klein teaches that the instant surfactants act to stabilize the pigments in the composition. Furthermore, one would

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expect similar results since EP also teaches the use of surfactants to aid in the dispersion of the pigment in the gel composition.

Claims 30, 33, 36, 41, 43-50, 60, 63-66, 68-69, and 79-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roulier et al (6,045,814) by itself or in view of Miyajima et al (5,891,450).

Roulier teaches cosmetic rigid gels containing hydrophilic gelling agents, water, and a lamellar phase. The composition is of instant structural features recited in the independent claims. See column 1, lines 16-30. The gelling agent is in the amount of 20-80% of the composition. The example utilizes 30%. See column 3, lines 60-65. Microorganism exudates such as xanthan gum, cellulose, etc. are taught on column 3, lines 24-30. The fillers are present in a concentration of up to 80%. See column 3, lines 54-57. Various pigments such as titanium oxides, micas, etc. and its particles sizes are taught on column 4. Incorporation of silicon oils is taught on column 6, line 25.

Roulier does not teach the gelling agent in the instant amount.

Miyajima et al teach a polysaccharide derivative in cosmetic compositions.

Miyajima discloses that cellulose ethers are relatively excellent in viscosity stabilizing ability in aqueous solutions compared with Carbopol but are lower in thickening ability in the same concentration. Therefore it is necessary to increase the amount of cellulose ethers to provide the same thickening ability. The instant polysaccharide is novel in that it has excellent transparency and thickening ability at low concentrations.

It is deemed obvious to one of ordinary skill in the art at the time the invention was made to manipulate the amount of hydrophilic gelling agent utilized in Roulier et al

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since the instant claims merely recite "less than 20%" and Roulier teaches a preferable range of 20-80%. Therefore, the inclusion of the gelling agent in the amount of 19.95%, for example, does not impart patentability to the claims. The mere optimization of ranges thorough routine experimentation of concentrations does not support patentability unless evidence indicating criticality is provided. If applicant were to argue that the ranges are not merely optimized, a clear distinction between the prior art's range and the instant claims would have to be recited since applicant's claims recite all numerical percentages below 20% including 19.999%.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Roulier et al and Miyajima et al and incorporate the gelling agent in the instant amount. One would be motivated to do so since Miyajima teaches that each gelling agent/thickener has different properties and depending on its concentration, increases the viscosity of the composition to the desired consistency. Therefore, depending on the particular gelling agent utilized and its individual properties, one of ordinary skill in the art would incorporate the gelling agent in the desired amount to manipulate the consistency. Thus, if one were to use the polysaccharide of Miyajima, one would use a lower concentration and obtain the same effect versus another polysaccharide in a higher concentration.

Claims 61-63 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roulier et al (6,045,814) by itself or in view of Miyajima et al (5,891,450) in further view of EP 0803245.

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Roulier teaches cosmetic rigid gels containing hydrophilic gelling agents, water, and a lamellar phase. The composition is of instant structural features recited in the independent claims. See column 1, lines 16-30. The gelling agent is in the amount of 20-80% of the composition. The example utilizes 30%. See column 3, lines 60-65.

Microorganism exudates such as xanthan gum, cellulose, etc. are taught on column 3, lines 24-30. The fillers are present in a concentration of up to 80%. See column 3, lines 54-57. Various pigments such as titanium oxides, micas, etc. and its particles sizes are taught on column 4. Incorporation of silicon oils is taught on column 6, line 25.

Miyajima et al teach a polysaccharide derivative in cosmetic compositions and the manipulation of viscosity depending on concentration.

The references do not teach the incorporation of instant salts and glycols.

EP teaches a compact solid gel for skin care containing water in the range of 15-90%, polysaccharides in the range of 0.3-4%, humectants ranging from 4-40%, and a powder phase ranging from 2-35%. Polysaccharides suitable are carrageenin, agar, gellan, and alginic acid. See column 1, lines 34-38. Suitable humectants such as glycerin, polypropylene glycol, butylene glycol, dimethicone copolyol, etc. are taught on column 1, lines 40-45. Suitable pigments are listed on column 2, lines 3-20. The pigments may be coated with lecithin or other material to improve dispersion of the pigments into the gel. Suitable salts such as sodium, potassium, magnesium chloride, etc. are taught on column 1, lines 52-55 to stiffen the structure of the gel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the references and incorporate the

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instant salt. One would be motivated to do so since EP teaches the use of the instant salt to stiffen the gel. Furthermore, EP teaches the use of glycols to act as humectants in the compositions. A skilled artisan could reasonably expect success since both references teach solid gel compositions and similar components.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG



July 9, 2003


MICHAEL G. HARTLEY
PRIMARY EXAMINER